

In the Matter of Merchant Mariner's Document No. Z-272268-D1  
Issued to: FRANCIS EMANUEL JOSEPH

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1006

FRANCIS EMANUEL JOSEPH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 July 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-272268-D1 issued to Francis Emanuel Joseph upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as crew pantry-man under authority of his Merchant Mariner's Document on the American SS MORMACPINE, on or about 17 June 1957, at Gothenburg, Sweden, he assaulted and battered Leonard Perez, a fellow crew member, by striking him with a crowbar.

On 8 July 1957, Appellant was served with the specification and ordered to appear at a hearing on 10 July 1957. Appellant failed to appear at the designated time and place. The hearing was conducted in absentia and the Examiner entered a plea of "not guilty" to the charge and specification on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced into evidence a certified copy of an extract from the Shipping Articles of the MORMACPINE as well as certified copies of entries, contained in the ship's Official Logbook, with attached ex parte statements by Appellant and three other crew members. Leonard Perez, the alleged victim of the assault, was called to testify.

At the conclusion of the hearing, the Examiner heard the argument of the Investigating Officer and gave him an opportunity to submit proposed findings and conclusions. The Examiner then announced his findings and concluded that the charge and specification had been proved. An order was entered suspending outright all documents, issued to Appellant, for a period of twelve months.

The decision was served on 16 July 1957. Appeal was timely filed on 18 July 1957.

FINDINGS OF FACT

On 17 June 1957, Appellant was serving as crew pantryman on

the American SS MORMACPINE and acting under authority of his Merchant Mariner's Document No. Z-272268-D1 while the ship was in the port of Gothenburg, Sweden.

An altercation originated in the crew pantry between Appellant and Perez, a member of the crew, and continued on the dock. Perez, who had followed Appellant to the dock, exhibited an ice pick. Appellant picked up a crowbar. After Perez threw a shovel at Appellant and missed him, the latter chased Perez with the crowbar. Perez was overtaken in the vicinity of the gangway and fell to the ground when struck on the head with the crowbar. Appellant continued to strike the fallen Perez with the bar until bystanders intervened. Perez was hospitalized locally because of the sustained injuries.

Appellant has no prior disciplinary record.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that only through inadvertence or misunderstanding had he failed to appear at the hearing; as a result he was unable to pursue his defense of justification. Furthermore, he contends that the order is excessive, particularly in view of the fact that he was not the aggressor. Appellant requests a rehearing or the return of his document.

### OPINION

There is no merit in the points raised by Appellant in his appeal. He was given ample opportunity to present any available defense before the Examiner, but Appellant waived that right when he failed to appear at the hearing. The Investigating Officer testified that he informed Appellant that the hearing would proceed without his presence if he did not appear, and thereafter indicated the specific date and time to him. This evidence and the physical clarity of the hearing date as noted on the original charge sheet makes the possibility, suggested by Appellant, that he confused the number with the hearing date exceedingly remote. The remoteness of that possibility does not outweigh the necessity for finality of process. Hence, Appellant's request for a rehearing is denied.

The rights of Appellant were not unfairly prejudiced by his failure to appear. The charge and specification were adequately proved by the testimony of the victim which was substantially corroborated by the documentary evidence introduced. Appellant urges a defense only justification, presumably self-defense. A man is not acting in self-defense when he pursues an alleged assailant, strikes him down with a crowbar, and continues to strike him after he has fallen to the ground. Clearly, the continued beating was excessive force even if the initial blow with the crowbar was justified on the basis Perez was the original aggressor with a weapon when he brandished the ice pick. Three of the four ex parte statements attached to the logbook entry directly support the testimony of Perez that he was repeatedly struck with the crowbar after he had been knocked down. The fourth statement was made by Appellant and he stated that he closed in on Perez and beat him with the crowbar after ducking the shovel thrown by Perez. Thus, even Appellant's statement does not deny

that he continued to beat Perez after he was down.

In view of all circumstances, I do not consider the order of twelve month's suspension to be excessive.

ORDER

The Order of the Examiner dated at New York, New York, on 16 July 1957, is ~~AFFIRMED~~ **AFFIRMED**.

A.E. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 5th day of March, 1958.